

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
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APPEAL OF BENJAMIN RIVERA

Case No. A-5713

OPINION OF THE BOARD

(Hearing held February 6, 2002)
(Effective date of Opinion: June 28, 2002)

Case No. A-5713 is an administrative appeal in which the Appellant charges administrative error on the part of the Department of Housing and Community Affairs (DHCA) in its issuance of condemnation notice on December 6, 2001 to the owners of the property located at 8613 Greenwood Avenue in Silver Spring, Maryland.

A public hearing was held pursuant to Sections 2-112 (a) and 26-14 (b) of the Montgomery County Code. The Appellant, Mr. Benjamin Rivera, appeared on his own behalf. Walter Wilson, Esq. represented Montgomery County, Maryland. Testifying in opposition to the appeal were Mr. Kevin Martell and Mr. Robert Dejter, Inspectors, Department of Housing and Community Affairs.

Decision of the Board: Administrative appeal **denied**.

EVIDENCE PRESENTED

1. The subject property is a single family home at Lot P1, Block J, Battery Park Subdivision, located at 8613 Greenwood Avenue in Silver Spring, Maryland.

2. Mr. Martell testified that he condemned the property because of the conditions he observed when he visited the property on December 5, 2001. He then presented evidence indicating that the property housed as many as 14 occupants who were living in overcrowded, dangerous, and unsanitary conditions inside the dwelling. Mr. Martell testified specifically about broken glass, loose electrical wiring, lack of sufficient egress and other potential fire hazards inside the dwelling. [Exhibit No. 3]

3. Mr. Martell testified about conditions outside dwelling, which included discarded mattresses, paint cans, old tires, and various other accumulations of solid waste, trash, and debris in the front, rear and side yards. According to Mr. Martell, there were inoperable abandoned vehicles on the property as well, photographs of which he offered into evidence. Mr. Martell's testimony also included several photographs showing rat holes and fresh rat droppings at several locations under and in the rear of the dwelling.

4. Mr. Dejter testified that he had accompanied Mr. Martell on the day that Mr. Martell visited the property before issuing the notice of condemnation and had taken all of the photographs that Mr. Martell had entered into evidence. Mr. Dejter also testified that he had been familiar with the subject property for some time because of the property's history of being a blight on the community as a result of the solid waste issues that Mr. Martell had pointed out in his testimony.

5. Mr. Dejter went on to describe the conditions he observed at the property as being among the worst he had seen in his eight years as a housing code field supervisor. According to Mr. Dejter, there was no egress from any of the cellar units or rooms and the electrical hazards, such as wires being held up by water pipes that could leak and pose a risk of electrocution, were glaring. Mr. Dejter also reiterated Mr. Martell's earlier testimony about a severe rat problem on the premises, which he described as second to none.

6. Mr. Rivera testified that the back of the neighboring Shell Station was the source of the rat problem rather than the condemned property. Mr. Rivera also testified that he had dealt with Mr. Martell in the past on 28 previous violations that he and Mr. Martell had been able to satisfactorily resolve. Finally, Mr. Rivera stated that the basis of his appeal of the condemnation notice was that it was unnecessary for DHCA to have issued it since he has tried to work with Mr. Martell whenever Mr. Martell has visited the property and pointed out violations.

FINDINGS OF THE BOARD

1. Section 26-12 of the Montgomery County Code law authorizes DHCA to enforce County law by condemning a dwelling unit as unfit for human habitation or unsafe for human occupancy if:

(a) The dwelling unit is, entirely or in part, so damaged, decayed, dilapidated, unsanitary, unsafe or vermin-infested that it creates a serious hazard to the health or safety of the occupants or of the public;

(b) The dwelling unit lacks, entirely or in part, illumination, ventilation, heating, water supply, or sanitation facilities adequate to protect the health or safety of the occupants or of the public as required under County law;

(c) Because of its general condition, the dwelling unit is, entirely or in part, unsanitary or otherwise dangerous to the health or safety of the occupants or the public; or

(d) The dwelling unit contains unsafe equipment, including any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment, on the premises or in the structure which is in such disrepair or condition that it is a hazard to the life, health, property or safety of the occupants or the public.

2. As of December 6, 2001, the day that DHCA issued the notice of condemnation to the Appellant, all of the conditions identified above were sufficiently present on the premises of the property at 8613 Greenwood Avenue in Silver Spring, Maryland to make the property unfit for human habitation and unsafe for human occupancy.

The Board concludes that there was no administrative error on the part of DHCA in the issuance of the notice of condemnation to the Appellant on December 6, 2001. The appeal is, therefore, **DENIED**.

On a motion by Louise L. Mayer, seconded by Allison I. Fultz, with Angelo M. Caputo, Donna L. Barron and Donald H. Spence, Jr., Chairman, in agreement, the Board adopts the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 28th day of June, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within ten (10) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 2A-10(f) of the Montgomery County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.